

1  
2  
3  
4  
5  
6                   UNITED STATES DISTRICT COURT  
7                   WESTERN DISTRICT OF WASHINGTON  
8                   AT TACOMA

9                   WILLIE HUGH WALKER, JR.,

10                  Plaintiff,

11                  v.

12                  UNITED STATES OF AMERICA, PUGET  
13                  SOUND NAVAL SHIPYARD, in its official  
14                  capacity as Plaintiff's Federal Employer, and  
15                  SECRETARY OF LABOR OFFICE OF  
16                  WORKERS' COMPENSATION PROGRAMS  
17                  in its official capacity as Administrator of a  
18                  Federal Law for Federal Employees'  
19                  employment related injuries sustained while in  
20                  the performance of a duty,

21                  Defendants.

22                  Case No. C05-5742RJB

23                  ORDER GRANTING MOTION TO  
24                  AMEND

25                  This matter comes before the Court on Plaintiff's Motion to Amend Complaint (Dkt. 35).  
26                  This Court has considered the pleadings filed in support of and in opposition to the motion, and the  
27                  remaining file herein.

28                  I. FACTS

29                  On November 14, 2005, Plaintiff filed a civil suit against the United States, the Puget  
30                  Sound Naval Shipyard ("PSNS"), and the Secretary of Labor for the Office of Workers'  
31                  Compensation Programs ("OWCP"). Dkt. 3. His claims arise from his employment as a  
32                  sandblaster at the PSNS from 1979 to 1984, and the Defendants' subsequent handling of his  
33                  various workers' compensation claims pursuant to the Federal Employees' Compensation Act  
34                  ("FECA"), 5 U.S.C. § 8128. *Id.*

1 On July 18, 2006, Plaintiff's complaint was dismissed with prejudice excepting those  
 2 constitutional claims based on events occurring after April 28, 2004. Dkt. 34. Plaintiff's claims  
 3 regarding events which occurred prior to April 28, 2004 were found to be barred by res judicata.  
 4 *Id.* Plaintiff's claims, which were not based on the constitution, regarding events occurring after  
 5 April 28, 2004, were dismissed because federal court review was precluded by 5 U.S.C. § 8128(b).  
 6 *Id.* Plaintiff's constitutional claims based on events occurring after April 28, 2004, were dismissed  
 7 without prejudice due to Plaintiff's failure to allege sufficient facts to support his claims. *Id.*  
 8 Plaintiff was given fourteen days to file an amended complaint. *Id.* Plaintiff timely filed the  
 9 present Motion to Amend Complaint. Dkt. 35. Aside from the first paragraph of the pleading, it  
 10 appears that Plaintiff intends this document to serve as his amended complaint. *Id.*

## 11                   II. DISCUSSION

12 Fed. R. Civ. P. 15(a) permits a party to amend its pleading "only by leave of the court, or  
 13 by written consent of the adverse party." Leave is freely given when justice so requires. *Id.*

14 Plaintiff should be granted leave to amend his complaint. Plaintiff filed his proposed  
 15 amended complaint in a timely fashion. Defendants indicate that they have no objection to  
 16 Plaintiff's motion, but anticipate filing a motion to dismiss the amended complaint. Dkt. 36.  
 17 Accordingly, Plaintiff's motion should be granted.

## 19                   II. ORDER

20 Therefore, it is now **ORDERED** that Plaintiff's Motion to Amend Complaint (Dkt. 35) is  
 21 **GRANTED.**

22 The Clerk of the Court is instructed to send uncertified copies of this Order to all counsel  
 23 of record and to any party appearing pro se at said party's last known address.

24                   DATED this 21st day of August, 2006.

25  
 26                     
 27                   Robert J Bryan  
 28                   United States District Judge